

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: December 19, 2016

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AEGEAN BUNKERING (USA) LLC,

Plaintiff,

v.

M/T AMAZON (IMO NO. 9476654), its
engines, tackle and apparel, etc., and
CERTAIN BUNKERS FO 500 CST
aboard or loaded aboard the M/T
AMAZON,

Defendants *in rem*,

JASPER EXPORTING LTD.,

Defendants
quasi in rem,

and

MASTER of the M/T AMAZON,

Garnishee.

JASPER EXPORTING LTD.,

Third-Party
Plaintiff,

v.

O.W. BUNKER MALTA, LTD
and ING BANK N.V.,

Third-Party
Defendants,

14 Civ. 9447 (KBF)


ORDER

KATHERINE B. FORREST, District Judge:

There is no need for the Court to approve the stipulation submitted at ECF No. 161-1 and attached here. If private parties agreed to resolve their claims in this matter, the Court need not approve the basis for such resolution.

SO ORDERED.

Dated: New York, New York
December 19, 2016

A handwritten signature in black ink, appearing to read "K. B. Forrest", is written above a horizontal line.

KATHERINE B. FORREST
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AEGEAN BUNKERING (USA) LLC,
Plaintiff,

14-cv-9447(KBF)

v.

MT AMAZON (IMO 9476654), its engines,
tackle and apparel, Certain bunkers FO 500 CST
aboard or loaded aboard the M/T AMAZON,
Defendants *in rem*,

BERGEN BUNKERS, AS,
JASPER EXPORTING LTD.,
Defendants *quasi in rem*,
and

The Master of the M/T AMAZON,
Garnishee,

JASPER EXPORTING LTD.,
Third-Party Interpleader Plaintiff,

v.

O.W. BUNKER MALTA, LTD., O.W. BUNKER
USA, INC., and ING BANK N.V.,
Third-Party Interpleader Defendants.

STIPULATION

WHEREAS, in October 2014, the M/T *Amazon* (the "Vessel") was supplied with 446 metric tons of fuel oil at Marcus Hook, Pennsylvania (the "Bunker Delivery");

WHEREAS, Plaintiff Aegean Bunkering (USA) LLC ("Aegean") filed this vessel arrest action asserting that it was the physical supplier of the Bunker Delivery and possessed a maritime lien against the Vessel for the Bunker Delivery for which Aegean invoiced the total amount of \$981,708.20 (Dkt. 1);

WHEREAS, in response to the actual arrest of the Vessel, on April 7, 2015 Jasper Exporting Ltd. ("Jasper"), as owner of the Vessel, deposited security in the amount of \$1,150,000.00 into the Registry of the Court pursuant to the March 31, 2015 Order for Deposit (Dkt. 41) issued by Judge Forrest;

WHEREAS, Jasper deposited the further sum of \$58,902.49 into the Registry of the Court pursuant to the March 31, 2015 Order for Deposit (the two tranches collectively herein referenced as the "Security Deposit"), which security remains in place;

WHEREAS, in response to Aegean's Complaint, Jasper filed an Amended Answer with Counterclaim and Third-Party Complaint seeking interpleader and declaratory relief, in which it named as interpleader defendants, *inter alia*, Plaintiff Aegean and Third-Party Defendant ING Bank N.V. ("ING") (Dkt. 83);

WHEREAS, ING appeared as Security Agent to enforce its asserted rights as assignee of O.W. Bunker Malta Ltd. ("O.W. Malta"), which had contracted with Jasper's agent Dynacom Tankers Management Ltd. ("Dynacom") for the Bunker Delivery and which invoiced Dynacom a total of \$994,313.42 for the Bunker Delivery;

WHEREAS, ING alleged that it was entitled to be paid for the Bunker Delivery because O.W. Malta is the only party who holds a maritime lien in the case (Dkt. 87 ¶ 9) and asserted that, if and only to the extent that the Court asserted jurisdiction over ING's contract claims, as to which ING has expressly reserved its rights, Jasper was obligated to pay ING pursuant to the terms of the contract between Dynacom and O.W. Malta;

WHEREAS, on August 25, 2016, the Court entered summary judgment dismissing Aegean's complaint in its entirety.

NOW considering the foregoing and the pleadings and proceedings had herein, ING and Jasper hereby stipulate and agree as follows:

1. Under the circumstances, judgment can be entered declaring that ING is entitled to be paid for the Bunker Delivery in the total amount of the O.W. Malta invoice (\$994,313.42) with interest to be calculated as reflected in the parties' confidential agreement, dated December 19, 2016 (the "Settlement Agreement");

2. Pending the resolution of any appeal(s) filed by Plaintiff Aegean, if any, ING and Jasper agree that enforcement of the judgment described in paragraph 1 and a release of the security posted by Jasper in connection with these proceedings are stayed;

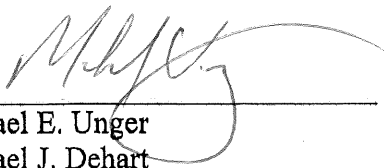
3. If the District Court's opinion on Aegean's claims is reversed or vacated on final appeal, then the judgment described in paragraph 1 herein shall be vacated. The parties reserve all rights with respect to the claims to be decided in that event, including the appropriate jurisdiction therefore, and any rights, claims or defenses that may arise in the event of a reversal or vacatur upon final appeal.

4. Jasper and ING agree to the entry of final judgment in the following form, which the parties respectfully request be endorsed by the Court:

FINAL JUDGMENT

For the reasons set forth in the Stipulation entered between ING Bank N.V. ("ING") and Jasper Exporting Ltd. ("Jasper") (Exhibit 1, Dkt. 161), judgment is hereby entered in ING's favor in the total amount of \$994,313.42 with interest to run per the Settlement Agreement between ING and Jasper.

Dated - December 19, 2016



Michael E. Unger
Michael J. Dehart
FREEHILL HOGAN & MAHAR, LLP
80 Pine Street
New York, NY 10005
(212) 425-1900 / (212) 425-1901 (Fax)

Attorneys for Jasper Exporting Ltd.



David E. Potter
Anna Pia Nicolas
LAZARE POTTER & GIACOVAS LLP
950 Third Avenue
New York, New York 10022

Attorneys for ING Bank N.V., as Security Agent

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on ^{December 19}~~November~~, 2016, a true and correct copy of the captioned document was served via ECF upon the following counsel:

J. Stephen Simms
Marios J. Monopolis
Simms Showers LLP
201 International Circle, Suite 250
Hunt Valley, Maryland 21030

*Attorneys for Plaintiff Aegean Bunkering
(USA) LLC*

David E. Potter
Ana Pia Nicolas
Lazare Potter & Giacovas LLP
875 Third Avenue, 28th Floor
New York, New York 10022

*Attorneys for Third-Party Defendant ING Bank
N.V.*

/s/ Michael E. Unger

Michael E. Unger